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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

OCT 30 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
Preemption of State and Local Zoning and)
Land Use Restrictions on the Siting,)
Placement and Construction of Broadcast)
Station Transmission Facilities)

MM Docket No. 97-182

**COMMENTS OF FREEDOM COMMUNICATIONS, INC. ON THE
NOTICE OF PROPOSED RULEMAKING**

Freedom Communications, Inc. ("Freedom") submits these comments in response to the Commission's *Notice of Proposed Rule Making* in the above-referenced proceeding.¹

Freedom is the parent corporation of the licensees of six full-service commercial television stations: WLNE(TV), New Bedford-Providence, Massachusetts; WRGB(TV), Albany-Schneectady-Troy, New York; WTVC(TV), Chattanooga, Tennessee; KFDM-TV, Beaumont-Port Arthur, Texas; KTVL(TV), Medford, Oregon; and WPEC-TV, West Palm Beach, Florida. All of these stations operate in small or mid-sized markets.

Freedom continues to support the Commission's efforts to make DTV a reality.² The rapid deployment of DTV will be jeopardized, however, unless the Commission takes swift action to preempt state and local tower siting restrictions as it has proposed to do in this proceeding. Freedom has had first hand experience struggling with burdensome, costly, and time

¹ *Notice of Proposed Rulemaking*, MM Docket No. 97-182, FCC 97-296 (Rel. Aug. 19, 1997) (*Notice*).

² Freedom has actively participated in the Commission's DTV proceeding.

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consuming zoning battles in seeking permission to relocate WLNE's NTSC tower to the antenna farm where most of the other stations in the market are located. Ultimately, after a long and drawn out struggle, Freedom was denied the authority to move. Now, in transitioning to DTV, Freedom and countless other station operators are faced with the prospect of encountering that same type of zoning approval process all over again. Freedom urges the Commission to adopt its proposal to preempt state and local restrictions to ensure that the same tower siting issues that have burdened WLNE will not replicated in the DTV environment.

Freedom agrees that federal preemption is particularly appropriate in this context, to facilitate the successful implementation of DTV. As the Commission has observed in its *Notice*, federal preemption is appropriate and permissible where state or local law stands as an obstacle to the accomplishments and execution of Congressional objectives or is necessary to achieve authorized Commission purposes. *Notice* at ¶ 12. Congress has required the implementation of DTV on an aggressive schedule. Station operators will not be able to meet such requirements unless they can obtain the appropriate zoning approvals. As requested in the *Notice*, Freedom submits these comments to document the obstacles that it has faced in the past in obtaining local zoning clearances for its broadcast facilities. *Notice* at ¶¶ 17-23.

WLNE's transmitter location historically has been a handicapped one.³ Originally the New Bedford-Providence market was served only by CBS and NBC. In the Commission's attempts in the early 1960's to establish three competitive, off-air VHF stations in the New

³ A more complete discussion of the history of WLNE's disadvantageous transmitter location is set forth in comments Freedom filed with the Commission in the DTV proceeding. See Comments of Freedom Communications, Inc., MM Docket No. 97-182 (filed Nov. 22, 1996); Reply Comments of Freedom Communications, Inc., MM Docket No. 97-182 (filed Jan. 24, 1997).

Bedford-Providence market, and thereby provide ABC an outlet there, it “shoehorned” Channel 6 into its present site through the expedient of sanctioning a transmitter site that is short-spaced to three other VHF stations and located about 20 miles away from the antenna farm where virtually all other stations in the market are located. Despite these short spacings, the Commission concluded “that the proposal [for a Tiverton location] ... represents the most practical solution for bringing a much needed VHF service to Providence and southern Massachusetts.”⁴ Because WLNE’s present transmitter site is disadvantageously situated for the existing off-air antenna orientation in the market, however, over-the-air viewers of the station have received a markedly inferior over-the-air signal from WLNE, compared to the signals of the other network stations in the market.

The transition to DTV provides an opportunity to rectify these past inequities and the DTV allotment scheme adopted by the Commission appears to provide WLNE the necessary flexibility to do so. A successful transition to DTV, however, also will be dependent on WLNE’s ability to obtain the zoning clearance needed to construct and operate facilities at a new tower location. WLNE’s prior history with a proposed tower move illustrates the significant obstacles that can be presented by the local zoning process.

Freedom initiated efforts in 1986 to relocate WLNE’s transmitter to a more competitive location in Rehobeth, Massachusetts. To find a site that would allow WLNE to continue to offer service to New Bedford, and provide coverage to new consumers, Freedom commissioned a comprehensive land survey and proposed innovative engineering techniques to ensure that the relocation would avoid interference to other television stations. After completing

⁴ *WTEV Television*, 23 Rad. Reg. at 1056.

exhaustive studies, Freedom identified the very small geographic area that would allow it to accomplish these objectives, and secured an option to purchase a 25 acre parcel of land. This parcel was about two miles from the existing three antenna towers that already served the area and was located on farm land. Freedom initiated the requisite approval process with the local zoning authority. Considerable delays stalled the consideration and resolution of Freedom's request. Along the way, a number of local residents expressed concerns (which were unfounded) that the proposed tower would pose a radiation threat to the community. Those concerns were not an issue because the proposed tower met all FCC regulations. The proposed was referred to a town meeting and defeated. The processes that were put in place by the zoning board were ineffective, and WLNE lost an opportunity to bring additional service to the public. In 1989, more than three years and hundreds of thousands of dollars later, Freedom's dogged efforts ultimately were quashed by a grass roots lobbying campaign. The zoning process administered by the Planning Board effectively foreclosed Freedom's ability to relocate its tower.

In the transition to DTV, many stations will face challenges similar to the ones Freedom experienced in its prior attempt to relocate the WLNE tower, including the numerous delays, considerable expense, and burdensome regulatory requirements in the zoning approval process. Many stations are likely to be limited by the allotment table in the geographic areas where they can construct a DTV tower. Thus, they face the prospect of encountering zoning restrictions that may significantly limit their ability to use the limited number of available DTV tower sites.

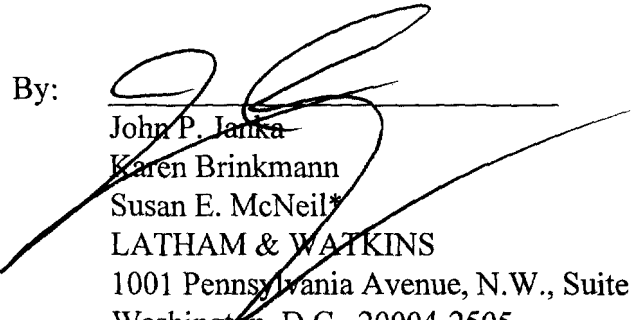
Broadcast television stations will require significant flexibility in order to meet the Congressionally mandated construction requirements and begin to provide DTV service --

deadlines that simply cannot be met unless the Commission adopts a scheme to prevent local zoning from being an obstacle. To ensure the rapid introduction of DTV, Freedom urges the Commission to adopt its proposal to preempt state and local zoning restrictions as set forth in its *Notice*.

Respectfully submitted,

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